

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHANCELLOR MEDIA
CORPORATION

and

KUNZ & COMPANY,

Defendants.

Civil Action No. 1|98CV02763

(Judge Kollar-Kotelly)

PLAINTIFF'S MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. §§ 16 (b) - (h), plaintiff United States moves for entry of the proposed Final Judgment annexed hereto in this civil antitrust proceeding. The Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement filed in the matter on November 17, 1998 explains why entry of the proposed Final Judgment would be in the public interest. A Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired has been filed simultaneously with this Motion.

I. Background

The United States filed a civil antitrust Complaint on November 12, 1998 alleging that a proposed acquisition of Kunz & Company ("Kunz") by Chancellor Media Corporation ("Chancellor") would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Chancellor and Kunz compete head-to-head to sell outdoor advertising in four counties: (1) Kern County, California; (2) Kings County, California; (3) Inyo County, California; and (4) Mojave County, Arizona (collectively "the Four Counties"). Outdoor advertising companies sell advertising space, such as on billboards, to

local and national customers. The outdoor advertising business in the Four Counties is highly concentrated. Chancellor and Kunz have a combined share of revenue ranging from about 60 percent a virtual monopoly in the Four Counties. Unless the acquisition is blocked, competition would be substantially lessened in the Four Counties, and advertisers would pay higher prices.

Shortly before this suit was filed, a proposed settlement was reached that permits Chancellor to complete its acquisition of Kunz, yet preserves competition in the Four Counties in which the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the Complaint was filed.

The proposed Final Judgment orders Chancellor to divest all of the outdoor advertising assets of:

- (1) Kunz in Kern County and Inyo County, California; and in Mojave County, Arizona; and
- (2) Chancellor in Kings County, California

to an acquirer acceptable to the United States. On March 2, 1999, pursuant to provision IV(B) of the proposed Final Judgment, the United States granted Chancellor a thirty calendar day extension to the initial four month time period -- which was to expire on March 12, 1999 -- to complete the divestiture required under the Final Judgment. The extension began on March 13, 1999, and was granted based on representations by Chancellor's counsel that Chancellor had received several bids for the relevant assets and was preparing to enter into final negotiations with one of the bidders. Chancellor's counsel expected to present a proposed buyer and proposed sale to DOJ by early April. Unless the United States grants an additional extension of time, the divestitures must be completed by April 12, 1999 or five days after notice of the entry of this Final Judgment by the Court, whichever is later.

If the divestitures are not completed within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the Final Judgment have been accomplished, Chancellor shall take all steps necessary to maintain and operate the advertising assets as active competitors; maintain the management, staffing, sales and marketing of the advertising assets; and maintain the advertising assets in operable condition at current capacity configurations. Further, the proposed Final Judgment requires Chancellor to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Four Counties.

The plaintiff and the defendants stipulated that the proposed Final Judgment was to be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the

proposed Final Judgment and to punish violations thereof. A Stipulation to this effect and proposed Final Judgment embodying the settlement were filed with the Court on November 12, 1998.

II. Compliance with the APPA

The APPA requires a sixty day period for the submission of public comments on the proposed Final Judgment. 15 U.S.C. § 16(b). In this case, the comment period terminated on February 23, 1999. During this period the United States received no comments on the proposed Final Judgment. The procedures required by the APPA prior to entry of the proposed Final Judgment are completed. The Certificate of Compliance filed by the United States with this Court simultaneously with this Motion demonstrates that all the requirements of the APPA have been met. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the Final Judgment.

III. Standard of Judicial Review

Before entering the proposed Final Judgment, the Court is to determine whether the Judgment is in the public interest." In making that determination, the court may consider:

- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
- (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its Competitive Impact Statement previously filed with the Court on November 17, 1998, the United States explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference.

The public, including affected competitors and customers, has had opportunity to comment on the proposed Final Judgment as required by law. There has been no showing that the proposed settlement constitutes an abuse of the Justice Department's discretion or that it is not within the zone of settlements consistent with the public interest.

IV. Conclusion

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and should enter the proposed Final Judgment without further hearings. The Final Judgment will remedy the anticompetitive effects of the challenged transaction. In the Four Counties where the merger would have made it more likely that prices would increase and the quality of services provided would be reduced for outdoor advertisers, the divestitures will preserve competition. Therefore, the United States respectfully requests that the proposed Final Judgment attached to this motion be entered as soon as possible.

Defendants have informed plaintiff that defendants consent to the entry of the Final Judgment in this matter.

Dated: April ___, 1999

Respectfully submitted,

Barry L. Creech (D.C. Bar # -- 421070)
U.S. Department of Justice
Antitrust Division
1401 H Street, NW Suite 4000
Washington, DC 20530
(202) 307-0001

Attorney for Plaintiff the United States

Certificate of Service

I, Barry L. Creech, hereby certify that, on April ____, 1999 I caused the foregoing document to be served on defendants Kunz & Company and Chancellor Media Corporation by having a copy mailed, first- class, postage prepaid, to:

Steven H. Schulman
Bruce J. Prager
Latham & Watkins
1001 Pennsylvania Ave., NW
Suite 1300
Washington, DC 20004
Counsel for Chancellor Media Corporation

Riccarda Heising
Powell, Goldstein, Frazer & Murphy LLP
191 Peachtree Street, NE
16th Floor
Atlanta, GA 30603
Counsel for Kunz & Company

Barry L. Creech
D.C. Bar No.-- 421070